

# **EXHIBIT G**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
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5   IN RE:    PROCESSED EGG PRODUCTS:                   MDL NO. 2002  
6   ANTITRUST LITIGATION                                 08-MDL-02002  
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8                                 - - - - -

9                                 PHILADELPHIA, PA  
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11                                 MAY 9, 2018  
12                                 DAY SIX

13   BEFORE:                 THE HONORABLE GENE E.K. PRATTER, J.  
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15                                 - - - - -

16                                 TRIAL TRANSCRIPT  
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18                                 - - - - -  
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21                                 KATHLEEN FELDMAN, CSR, CRR, RPR, CM  
22                                 Official Court Reporter  
23                                 Room 1234 - U.S. Courthouse  
24                                 601 Market Street  
25                                 Philadelphia, PA 19106  
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(Transcript produced by mechanical shorthand via C.A.T.)

1 A. Correct.

2 Q. And how those costs were allocated or passed on or how  
3 they were negotiated in a pricing formula was the subject of  
4 negotiation?

5 A. Yes.

6 Q. You mentioned Walmart.

7 A. Yes.

8 Q. And you noted that Michael Foods joined the UEP Certified  
9 Program in 2006, correct?

10 A. Correct.

11 Q. That was to accommodate Walmart, correct?

12 A. Oh, yeah, among a couple others, but that was one of the  
13 drivers, I think.

14 Q. What were the others that you were accommodating?

15 A. Well, I think some of these were these retail accounts  
16 that we've just been discussing. I'm trying to think who  
17 else. There probably was more, they're just not coming to  
18 mind at the moment. But there were some others who were in  
19 the wings or waiting or looking into it, so...

20 Q. Walmart required Michael Foods to become UEP Certified --

21 A. Yes.

22 Q. -- in order to sell eggs to Walmart; is that correct?

23 A. Yes.

24 Q. Were you involved in those discussions?

25 A. Yeah. I was in Bentonville, Arkansas in a meeting with,

1 I think the buyer was Gary Pickett, I think his name was, he  
2 was the egg buyer for corporate Walmart in those days. And so  
3 one of our retail sales vice-presidents and I went down and  
4 had a meeting with Gary just to try to understand exactly what  
5 we needed to do and what he would accept or -- you know. And  
6 at the end of the day, it was, we needed to be UEP Certified  
7 with a logo, which UEP Certified has a logo or had a logo, and  
8 that logo had to be on their cartons. And, again, this was  
9 the liquid egg products, the better than egg product that was  
10 on the -- that would be in the dairy case.

11 Q. And was the logo important to Walmart?

12 A. It was at that point, yes, it was.

13 Q. And --

14 A. It probably still is today. I'm just not familiar with  
15 it.

16 Q. You understood that from your meetings with the Walmart  
17 people?

18 A. Yes. Yes.

19 Q. Were you talking with any other companies that were also  
20 trying to get into Walmart at this time?

21 A. Yeah. There was -- our competitors were from ConAgra.

22 Q. Okay. Did you talk to Sparboe?

23 A. Yes. And there was some conversation, we had some  
24 correspondence with Sparboe.

25 Q. And did you talk --

1 A. They're on the shell side of it.

2 Q. Right.

3 Did you talk to Beth Schnell?

4 A. I did.

5 Q. Who is Beth Schnell?

6 A. Beth Schnell was the -- I believe she -- she was the  
7 president or vice-president of -- of Sparboe Farms based in  
8 Minnesota. And the reason I'm hesitating, she -- her father  
9 was the founder, Robert -- Bob Sparboe was the founder, and  
10 she was -- that was her dad. And I can't remember when he --  
11 he passed away suddenly and his daughter became the president  
12 of the company. I don't know if that was '06 or if that  
13 was -- it was sometime right after, maybe. That's my only  
14 hesitancy. I just don't remember the day. But anyway, she  
15 was very active in the Sparboe -- their business and their  
16 customer base.

17 Q. And do you recall whether Beth Schnell was trying to  
18 convince Walmart to purchase non-certified eggs?

19 A. Yes, she -- she went down -- she had meetings with them  
20 and specifically tried to convince them that there was  
21 proprietary programs of animal welfare that were comparable to  
22 UEP's in most -- in almost every way. But Walmart was really,  
23 really locked into the UEP Certified at that point in time.

24 Q. So you know that Beth Schnell was going down to Walmart  
25 trying to negotiate an exception or a change from

1 Walmart's demand for Certified eggs and the logo you  
2 described?

3 A. Yes.

4 Q. Were you part of those discussions?

5 A. Not -- not with her. We independently, when we were  
6 there, we brought up the same issue, a similar kind of  
7 question about a comparable program or proprietary program.  
8 But they had already really locked and loaded onto the logo  
9 and the UEP Certified Program.

10 Q. Did Ms. Schnell tell you about her efforts?

11 A. Yes, she did share some of the -- some -- some of the  
12 pieces of her visit and her endeavors, so...

13 MR. CALLOW: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 BY MR. CALLOW:

16 Q. Mr. Baker, I've handed you what I've marked as  
17 Defendants' Cross Exhibit 210.

18 Can you identify this document?

19 A. Yes, I can.

20 Q. What is this document?

21 A. It was an e-mail from our CEO in November of 2005. The  
22 CEO at that time was Gregg Ostrander, and it was sent to  
23 Mr. Clarkson, myself, our general managers for food ingredient  
24 retail, Vince O'Brien, and our food service VP, Michael Elliot  
25 and our retail VP, along with our CFO, Mark Westphal.

1 Q. And he asked you to review Ms. Schnell's report; is that  
2 correct?

3 A. Yes.

4 MR. CALLOW: Your Honor, I'd like to move  
5 Exhibit 210 into evidence and show it to the jury.

6 MR. NEUWIRTH: No objection, Your Honor.

7 THE COURT: Very well, 210 is admitted.

8 BY MR. CALLOW:

9 Q. So Ms. Schnell provided Michael Foods with the summary of  
10 her meetings with individuals at Walmart, including Gary  
11 Pickett, who you identified, and Betty Marshall. Do you see  
12 that, sir?

13 A. Yes, I do.

14 Q. And there were discussions regarding not only the  
15 Certified Program, but Walmart's insistence on having the seal  
16 as well, correct?

17 A. Yes.

18 Q. All right. And the dilemma what you were facing at  
19 Michael Foods is at this point in time, you're not part of the  
20 Certified Program, correct?

21 A. Not at this juncture we were not.

22 Q. And your competitors, like Sunny Fresh and ConAgra, are  
23 also trying to get the Walmart business?

24 A. Yes.

25 Q. And Michael Foods has to decide whether to join the

1 Certified Program in order to accommodate Walmart's demands at  
2 this point, correct?

3 A. Yes.

4 Q. Ms. Schnell was agitated that she could not convince  
5 Walmart to change its mind; is that correct?

6 A. Yes, I think that's a good description.

7 Q. She made all sorts of arguments, she tried different  
8 things. Walmart would not change its mind to be UEP  
9 Certified; is that correct?

10 A. Yes. Right.

11 Q. And eventually is that why Michael Foods chose to be part  
12 of the Certified Program?

13 A. That among other things, but this was a big piece of it,  
14 yes.

15 MR. CALLOW: Your Honor, may I approach?

16 THE COURT: Yes.

17 BY MR. CALLOW:

18 Q. Sir, I've handed you what, for trial purposes, I've  
19 marked as Defendants' Cross Exhibit 213, February 2006 e-mail  
20 chain. Do you see that, sir?

21 A. Yes.

22 Q. Can you identify this for the record?

23 A. Yes. This was an e-mail from Jeff Thomas to myself  
24 regarding the UEP Certified issue and a meeting with Sam's,  
25 and then this was occurring in February of 2006.



1 Q. So this helps give us a time frame for when you went down  
2 to Bentonville to talk with the Walmart/Sam's people?

3 A. Yes.

4 Q. Do you recall more than one meeting with Walmart?

5 A. I was only at one personally, but I think there might  
6 have been -- I'm sure there were others with our sales team  
7 and from retail, but I was only at one that I can recall.

8 MR. CALLOW: Your Honor, I'd like to admit this  
9 exhibit into evidence and display it to the jury.

10 MR. NEUWIRTH: No objection, Your Honor.

11 THE COURT: Okay. 213 is admitted.

12 BY MR. CALLOW:

13 Q. Sir, I want you to focus on the bottom e-mail that's sort  
14 of starts this chain --

15 A. Okay.

16 Q. -- which has some of the questions that they wanted to  
17 ask about. Do you see that?

18 A. Yes.

19 Q. And you'll see that there's a second paragraph that  
20 starts: We have had three go-arounds with the buyer at Sam's  
21 as it pertains to UEP. It was made very clear to us, without  
22 exception, that the largest retailer in the world is going to  
23 sell UEP eggs. They don't care what kind of carton they are  
24 in, with the shell on or not, this is coming down from  
25 corporate and it is a final conversation.

1                   Do you see that?

2     A.    Yes, I do.

3     Q.    And that was the pushback you were getting in your  
4   discussions as well, correct?

5     A.    Yes.   Yes.

6     Q.    There's a reference here that:   Some UEP Certified  
7   vendors are telling Walmart that they are getting more eggs  
8   since they started following the guidelines which has lowered  
9   their cost of eggs.

10                  Do you see that?

11    A.    Yes.

12    Q.    Do you recall any discussions that you had with Walmart  
13   in Bentonville in the March 2006 time frame on that particular  
14   issue?

15    A.    I don't recall specifically, no.

16    Q.    There's another question that was asked:   Does Michael  
17   Foods follow UEP Guidelines?   And if so, what has it done to  
18   their cost of eggs?

19                  Do you see that?

20    A.    Yes.

21    Q.    Was that one of the discussions that you had at your  
22   Walmart meeting in March of 2006?

23    A.    Yeah, I believe there were those kinds of questions that  
24   were asked.

25    Q.    Did you know what the cost was going to be at that time?

1 A. No. We were just estimating at that point. We didn't  
2 know for sure. We knew that -- when you increased the density  
3 or lowered -- how depending on the context, if you give the  
4 birds more space, you do get a small increase in production or  
5 productivity. But it doesn't offset the overall costs. But  
6 there were people who -- who experienced higher levels of  
7 production on a per-bird basis because of the additional  
8 space. But, again, it doesn't really equalize out with the  
9 higher cost, the facility cost and the capital cost. So at  
10 the end of the day, there was still a cost increase to do UEP  
11 Certified.

12 MR. CALLOW: Your Honor, may I approach?

13 THE COURT: Yes.

14 BY MR. CALLOW:

15 Q. Sir, I've handed you what I've marked for trial purposes  
16 as Defendants' Cross Exhibit 214. Is that your name at the  
17 top of this document?

18 A. Yes, it is.

19 Q. Can you identify this document for the record?

20 MR. NEUWIRTH: Your Honor, before it's identified,  
21 may we approach at a sidebar, please? There's a significant  
22 issue with this document.

23 THE COURT: Yes. Come on up.

24 (The following transpired at sidebar:)

25 THE COURT: Oh, sure, well, I'll tell you what,

1     since we've got -- two, four, six -- a half a dozen, you go  
2     sit down and we'll give the jury a break.

3             So don't talk about the case. Come on back in five,  
4     six minutes.

5             (End of sidebar.)

6             THE COURT: Okay, what's up?

7             MR. NEUWIRTH: Your Honor, during the testimony of  
8     Mr. Airoso from -- oh, can we excuse the witness?

9             THE COURT: Oh, sure.

10            Why don't you step down, Mr. Baker, and go enjoy the  
11     hallway.

12            (Witness steps out of the courtroom.)

13            THE COURT: You all can sit down. I'm just standing  
14     up because I'm tired.

15            MR. NEUWIRTH: The issue, Your Honor, is this:

16     During the testimony of Mr. Airoso from Walmart, there were  
17     documents handed to the witness by the Plaintiffs' counsel,  
18     including a letter from Mr. Poole and -- of Walmart, and the  
19     Defendants stood up and objected that because the letter was  
20     unsigned and because of their concern that it was hearsay,  
21     even though this was a witness from Walmart, that that letter  
22     should not be introduced, it should not even be discussed by  
23     Mr. Airoso, who wanted to address the authenticity of that  
24     document that the UEP was -- this is counsel for -- this is  
25     counsel for Michael Foods.

1 THE COURT: We've met before.

2 MR. NEUWIRTH: Yes. And if Ms. Anderson is going to  
3 be here, I hope there will be an instruction that what we are  
4 discussing cannot be shared by --

5 MS. MAHAN: If you'd like me to leave, Your Honor,  
6 I'm happy to leave.

7 THE COURT: Well, I mean --

8 MS. MAHAN: Carrie Mahan.

9 MR. NEUWIRTH: I'm sorry. I apologize.

10 MS. MAHAN: I'll wait in the hall. But I do have a  
11 timing question before we come back.

12 MR. NEUWIRTH: But you sustained that objection.  
13 Now the Defendants in, I think, in overt violation of the  
14 goose/gander rule, are seeking to show this witness an  
15 unsigned letter, which does have a cover e-mail on it, but so  
16 did the document that Mr. Olson tried to review with  
17 Mr. Airoso, and you granted the Defendants' motion on hearsay  
18 grounds, he could not even talk about that letter from his own  
19 company. And so we would object. We believe that it's only  
20 fair that the same treatment be given to this unsigned  
21 letter --

22 MR. OLSON: Can I make a clarification? Your Honor,  
23 I think what we request, this comes in with an explicit  
24 limiting instruction --

25 THE COURT: Well, I would have thought that the

1 objection was going to be that this is really just redundant  
2 because we've already gone over the Walmart view and  
3 Mr. Baker's knowledge of Walmart having a particular approach.  
4 I mean, this is just cumulative.

5 MR. OLSON: But, Your Honor, it's actually much  
6 worse than that from our perspective. This is -- the reality  
7 is, for what it's worth, Your Honor --

8 THE COURT: The last time I'm going to do  
9 anybody's work for them.

10 MR. OLSON: We believe these letters were forged.

11 THE COURT: Well, I'm not going there right now.

12 MR. OLSON: I understand that. That's what we would  
13 have brought out --

14 THE COURT: I have no basis on which to --

15 MR. OLSON: I'm just letting you know where we're  
16 going. I'm letting you know where we're going.

17 THE COURT: And if we're going to have a side  
18 hearing on that issue, then we're going to do that either at  
19 the end of the day after school is out or something else,  
20 but --

21 MR. OLSON: I'm not asking you to agree. I'll just  
22 let you know where we're going.

23 THE COURT: I think it's cumulative.

24 MR. NEUWIRTH: If that's a basis to keep it out,  
25 fine. But the concern -- just please, if I might just say

1     this.

2                 THE COURT:   Okay.

3                 MR. NEUWIRTH:  The concern is that we were denied  
4     the opportunity to let the witness from Walmart explain the  
5     basis for --

6                 THE COURT:  And I recall that, I recall that.

7                 MR. NEUWIRTH:  -- saying that these were misleading.  
8     And so for the Defendants now to try to use these same types  
9     of letters seems totally prejudicial to the Plaintiffs, and  
10    I'll just use the word goose/gander rather than a word with  
11    the H.

12                MR. OLSON:  And if I may, if the Defendants are  
13    doing this, which they're doing, they've already presented  
14    Walmart things.  We had Chad Gregory on the stand.  All we'd  
15    ask from the goose/gander perspective, because he was involved  
16    in all of this, that we are allowed to establish with  
17    Mr. Gregory the basis for why we believe these letters are  
18    inauthentic.

19                MR. CALLOW:  I don't know anything about Chad  
20    Gregory or this issue.

21                Terry Baker has an e-mail that was produced by  
22    Michael Foods, that the attachment is associated with it.  I  
23    intend to ask the witness if he received an e-mail and  
24    attachment.  That's the sole basis.  If it's cumulative, I  
25    understand, Your Honor.

1           THE COURT: How can it not be cumulative? I've been  
2 sitting here for -- I don't know how long.

3           MR. CALLOW: I understand.

4           THE COURT: And we've talked a lot about Walmart and  
5 Walmart's views and whether they're a big customer or not big  
6 customer.

7           MR. CALLOW: I will move on.

8           THE COURT: Good. Okay, so you're not going to be  
9 offering 214?

10          MR. CALLOW: No, I will not.

11          THE COURT: All right. Now, if we do need to  
12 revisit -- well, let me step back.

13                I've not heard that anybody is saying that any  
14 counsel involved in this trial has any reason to believe or to  
15 be offering or proposing or be proponents of documents known  
16 to be false or fraudulent. Is that correct?

17          MR. OLSON: May I? May I?

18          THE COURT: I'm not hearing that.

19          MR. NEUWIRTH: I was just going to say, the issue is  
20 not an issue about any of the counsel here. It's about what  
21 happened factually at the time by the people at the UEP.

22          THE COURT: Okay. If that becomes important with  
23 Chad, then let's talk about that separately.

24          MR. NEUWIRTH: Okay.

25          MR. OLSON: Okay, thank you, Your Honor.



1 MR. CALLOW: I will move on from Walmart,  
2 Your Honor.

3 THE COURT: I think we covered Walmart.

4 MR. CALLOW: I understand.

5 MR. DESTEFANO: Can we have a break?

6 THE COURT: Oh, yes, by all means bring the jury  
7 back. If you all need a break, I mean, very quickly.

8 (After recess:)

9 THE DEPUTY CLERK: All rise.

10 (Jury in.)

11 THE COURT: All right, everybody take their seats.

12 Mr. Callow, you may resume.

13 MR. CALLOW: Thank you.

14 BY MR. CALLOW:

15 Q. Mr. Baker, do you recall any discussions that you had  
16 with Yum! Corporation, which owns Taco Bell, in the 2003 time  
17 frame regarding Animal Welfare Guidelines?

18 A. I don't recall, to be honest.

19 Q. Do you recall discussions with Ben & Jerry's when Ben &  
20 Jerry's wanted to have Animal Welfare Guideline eggs?

21 A. Yes, I do Ben & Jerry's. And then the Ben & Jerry's  
22 relates to Unilever, since they're owned by Unilever, and they  
23 still are today. And so we were having conversations with Ben  
24 & Jerry's and Unilever.

25 Q. And what other products does Unilever manufacture for